

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

EDWARD MORRIS,)	CIVIL NO. <u>19-1-0123-01</u>	11th Div.
)		
Plaintiff,)	COMPLAINT; DEMAND FOR	
)	JURY TRIAL; SUMMONS	
vs.)		
)		
TRAYLOR BROS., INC., JOHN DOES))		
1-5, JANE DOES 1-5, DOE)		
CORPORATIONS 1-5, DOE)		
PARTNERSHIPS 1-5, DOE NON-)		
PROFIT ORGANIZATIONS 1-5, and))		
DOE GOVERNMENTAL AGENCIES 1-5,))		
)		
Defendants.)		
)		

COMPLAINT

EDWARD MORRIS, by and through his attorneys, Michael P. Healy and Charles H. Brower, and for causes of action against Defendant, alleges and avers as follows:

JURISDICTION OF THIS COURT



1. Plaintiff EDWARD MORRIS (hereinafter "MORRIS") was at all times mentioned herein a resident of Honolulu, and citizen of the State of Hawaii.

2. Defendant TRAYLOR BROS., INC., (hereinafter "TRAYLOR") is a foreign profit corporation, incorporated in the State of Indiana, and doing business in the State of Hawaii.

3. Pursuant to HRS § 378-63(b), the actions complained of herein occurred in the County of Honolulu, State of Hawaii.

STATEMENT OF FACTS

4. On April 19, 2017, Plaintiff was contacted by Mr. Sewel Crisman (hereinafter "CRISMAN"), Traylor's Director of Quality. The nature of the inquiry was to advise Plaintiff of a job opportunity; to be employed as the Quality Manager for TRAYLOR on the HART project, in Honolulu, Hawaii.

5. During the employment negotiating period between April 22, 2017, and May 2, 2017, Plaintiff spoke to CRISMAN and expressed his concerns. Specifically, Plaintiff discussed the lack of authority he might encounter as a Quality Manager on the HART project, due to excessive pressure by project leadership to complete the project on schedule, regardless of quality. Plaintiff also discussed the negative press HART was receiving, and construction quality concerns on the project. CRISMAN assured Plaintiff that he would be a "key manager" on the project with complete autonomy and independent authority on all

issues related to Quality, including stoppage of work if necessary. CRISMAN offered Plaintiff and his wife a trip to Hawaii to visit the project and have a few days to explore the island, which Plaintiff accepted.

6. On May 10, 2017, Plaintiff arrived in Hawaii and met with CRISMAN. Plaintiff remained in Hawaii for 5 days to visit the project, meet with staff, and research cost of living.

7. On May 15, 2017, CRISMAN offered Plaintiff the job as Quality Manager for TRAYLOR and advised Plaintiff that Dan Collins (hereinafter "COLLINS"), TRAYLOR'S Western Region Manager, advised that Plaintiff would have complete authority to control all work related to quality and would report directly to the JV leadership.

8. On May 18, 2017, Plaintiff received an offer of employment from TRAYLOR, to be their Quality Manager on the HART project in Honolulu. The official start date was June 26, 2017.

9. On June 28, 2017, at approximately 10:30 a.m., Plaintiff met with TRAYLOR'S Construction Manager, Ron James (hereinafter "JAMES"), to discuss project details. JAMES immediately expressed his complete dissatisfaction with the project and the current Project Manager, Bill Corn (hereinafter "CORN"). JAMES informed Plaintiff that Shimmick Construction staff were extremely hostile and that questionable ethical practices were pervasive. JAMES stated that the hostility

combined with questionable business ethical practices was so bad, that he was leaving the project.

10. On June 29, 2017, Plaintiff had his first formal meeting with Shimmick Construction Project Manager, CORN, who immediately behaved in an adversarial manner towards Plaintiff and expressed an overt animus towards Plaintiff's role as Quality Manager. CORN made it clear that the project does not need a "babysitter" and that the production crews would be managing all Quality issues, without the need for a Quality Manager, regardless of the contract requirements. CORN also informed Plaintiff that he does not want the Engineer to review any concrete submittals due to the time and cost associated with reviewing them and this effort was to be performed as part of the Plaintiffs responsibilities. Plaintiff strongly disagreed with this decision stating professional liability, liability to the JV and safety concerns.

11. On August 10, 2017 at 9:00am, Plaintiff met with Shimmick Construction Civil Discipline Lead, Ruben Saucido (hereinafter "SAUCIDO") over concerns brought to him by Quality Inspectors. Concerns included intimidation, verbal abuse and refusal to adhere to contract requirements related to mitigation of potholing work. Quality concerns related to potholing were consistently discussed with SAUCIDO and CORN throughout the lifespan of the potholing work. Plaintiff was also informed by

HART on numerous occasions that the potholing work was not being completed per the contract requirements and the guidelines required by the Hawaii Department of Transportation.

12. On September 14, 2017, Plaintiff generated the first of many Non-Conformance Reports (hereinafter "NCR") due to construction work not performed in accordance to the design requirements, contract, project specifications and other professional organizations. Immediately upon doing so, Plaintiff was harassed by SAUCIDO and the Foundations Discipline Manager, Rusty Lucido (hereinafter "LUCIDO") of Shimmick Construction & Legacy Foundation. Both would discredit Plaintiff to CORN and attempt to cover up the sub performance work before Plaintiff could show the work to HART.

13. On or about September 22, 2017, CORN informed Plaintiff that Plaintiff was being removed from all Quality authority over Environmental and Safety issues. This occurred as a result of Plaintiff expressing continued concerns over the lack of a HART approved Project Environmental Manager and for work being performed that was not in compliance to the design specifications and contract. Plaintiff expressed to CORN his disagreement over this decision stating that removing the Quality Manager from environmental and safety quality oversight would constitute an NCR and would also remove the "checks & balances" designed into the project and the responsibilities of

the Quality Manager to ensure work was not performed merely for the benefit of the construction schedule and costs.

14. CORN informed Plaintiff that any involvement by Plaintiff in the areas of environmental and safety would result in his removal from the project. Upon hearing this, Plaintiff reported what CORN said, to CRISMAN and COLLINS, who instructed Plaintiff to continue doing his job. Due to CORN's decision to remove Plaintiff from quality oversight of environmental and safety, HART issued NCR #5 titled; "QC Failing to Act Independently".

15. On October 3, 2017, at 1:00 p. m., a meeting was held in the office of the TRAYLOR Structures Manager, Darren Lueking (hereinafter "LUEKING"). Present at the meeting were LUEKING, TRAYLOR Project Control Manager, Lynnette Butler (hereinafter "BUTLER"), and CORN. Plaintiff was informed that a Quality Control Manager was being hired to oversee all Quality issues in the field and would report directly to CORN; essentially stripping Plaintiff of his job function.

16. Plaintiff expressed his strong disagreement and informed CORN that hiring this person was in violation of the contract and the Quality Assurance Plan, and that hiring a Quality Control Manager who reported directly to the Project Manager would remove the "checks & balances" built into the contract and the construction industry and essentially give CORN

complete control of all construction quality issues without the knowledge or involvement by Plaintiff. LUEKING also voiced concern over this decision for the same reasons.

17. CORN advised Plaintiff on multiple occasions that if Plaintiff continued to do his job, and remained involved in Quality Control issues, Plaintiff would be reported for insubordination and subsequently terminated. Upon hearing this, Plaintiff reported what CORN said to CRISMAN and COLLINS.

18. On or about the evening of October 3, 2017, Plaintiff was verbally attacked by a SHIMMICK Construction employee, Kekoa Lopez (hereinafter "LOPEZ"). This incident occurred after Plaintiff informed LOPEZ that the work LOPEZ was doing was in violation of the American Concrete Institute practices for concrete placement, specifically relating to the requirement to remove foreign debris prior to concrete placement. LOPEZ responded to Plaintiff by use of extreme profanity, and made comments attacking Plaintiffs professionalism and personal character. LOPEZ became very aggressive and threatened physical harm to the Plaintiff. This incident occurred in the presence of HDOT inspectors and STG staff, who had to intervene in order to prevent LOPEZ from physically harming the Plaintiff.

19. The incident was reported to project leadership and TRAYLOR'S Human Resources Director who informed Plaintiff that he was very much aware of on-going hostilities and would speak

with COLLINS, and the Traylor Vice President, John Meagher (hereinafter "MEAGHER"), about the incident. WATSON informed Plaintiff that in no way should Plaintiff have to endure such continued hostility and that those types of actions would not be tolerated. WATSON also stated that "silence is unacceptable". Due to pressure applied by project leadership, Plaintiff was asked to speak with LOPEZ and resolve the situation. LOPEZ retained his job.

20. On or about October or November 2017, due to overwhelming complaints expressed by Plaintiff and other TRAYLOR staff, the owner of TRAYLOR, Chris Traylor, traveled to the project to visit with Traylor project staff and CORN to voice his strong concern over growing project hostilities. Mr. Traylor met with Plaintiff and asked for Plaintiff's opinion. Plaintiff informed Taylor that it was impossible for Plaintiff to do his job under the on-going and increasing hostilities.

21. Plaintiff advised that Shimmick Construction project leadership were exceeding their authority under the contract by acting as what Plaintiff described as; "independent contractors", and were selectively deciding what if any, contract requirements regarding quality, they would adhere to. Plaintiff further informed Mr. Taylor that CORN and LUCIDO were attempting to hide and cover up construction deficiencies by

preventing Plaintiff and other Quality inspectors from overseeing certain drilled shaft operations.

22. Shimmick Construction crews attempted to hide subpar work being performed by scheduling some of the work without informing the quality inspectors as required by contract.

23. On October 21, 2017, at approximately 11:00 a.m., Plaintiff had a telephone conference with JV executives, LUCIDO, and CORN regarding the use of "unapproved" concrete mix in several drilled shafts.

24. LUCIDO told project quality inspectors that he was proceeding with placing concrete, that was not approved by the engineer, in drilled shafts No. 444, 445 and 446, irrespective of the Plaintiffs and quality inspectors objection. Plaintiff advised that, due to LUCIDO making changes to the concrete mix chemical makeup, structural failure could potentially occur and create a safety issue, as the concrete might not meet applicable design strength.

25. LUCIDO and CORN became increasingly argumentative with Plaintiff telling the JV executives that having the engineers approve a change in the concrete mix would take more time and delay the work. During the call, JV executive Bob Lofling yelled; "what I want to know is why the "f----" we placed unapproved concrete in the first place". Plaintiff outlined the events leading up to the non-conformance and the direction by

CORN and LUCIDO to proceed with placement regardless of no approvals. Plaintiff informed the JV executives, that he would generate NCRs for each drilled shaft that the unapproved concrete was placed.

26. Between September 14, 2017, and January 2018, Plaintiff made increasing documented concerns through emails, meetings, phone discussions and NCRs, over the continued lack of adherence to the contract regarding quality construction and oversight by Shimmick Construction and Legacy Foundation. Plaintiff also raised concerns about his quality inspectors being constantly harassed and prevented from performing their contract required inspections of drilled shafts Plaintiff informed CORN and the JV executives of the obstructionist behavior but neither did nothing about it. In fact, CORN and LUCIDO would be become increasingly aggressive towards Plaintiff.

27. On or about January 2018, Plaintiff Emailed COLLINS and MEAGHER expressing his concern over continued Quality deficiencies and work place harassment. After sending the email, Plaintiff had a telephone call with COLLINS. Plaintiff informed COLLINS, that due to the ongoing harassment, concerns over quality and structural integrity of work performed to date, safety and obstructionist behavior, either CORN had to be

removed from the project, so Plaintiff could do his job, or Plaintiff would be forced to resign.

28. Plaintiff discussed the email with CRISMAN and COLLINS. COLLINS informed Plaintiff that they were aware of the issues. COLLINS advised that under the contract, Shimmick Construction had the ability to overrule any decisions or actions made by TRAYLOR or the other JV partner, Ganite Construction due to Shimmick being the Managing Partner of the JV

29. Plaintiff informed COLLINS of his concerns regarding the structural integrity of drilled shafts because Legacy Foundation and LUCIDO were ignoring design and construction specifications and preventing proper inspection of the shafts. Plaintiff advised that he and his quality staff were constantly being intimidated, harassed, and pressured by CORN, SAUCIDO, and LUCIDO to continue moving forward with work to prevent construction delays and additional costs. COLLINS told Plaintiff he was aware of all these issues.

30. On February 7, 2018, Plaintiff initiated a "Stop Work Order" (hereinafter "SWO") due to concerns over construction of drilled shaft No. 454, wherein reinforcement was not being installed per the design requirements. Plaintiff observed Shimmick Construction and Legacy Foundation crews incorrectly installing reinforcement in the shaft; it was not plumb, lacked

proper clearance between reinforcement bars, and was not seated in the shaft correctly aligned between shaft and column embedded reinforcement.

31. Prior to initiating the SWO, Plaintiff contacted LUCIDO and informed him of the pending SWO, due to repeat non-conforming work being performed on drilled shafts. LUCIDO advised Plaintiff not initiate the SWO and that he would be on-site to correct the problem.

32. LUCIDO subsequently arrived on-site and attempted to correct the non-conforming work but after several attempts, the work remained out of compliance. LUCIDO informed Plaintiff that he was going to proceed regardless of the non-conforming work. Plaintiff issued the SWO, and immediately informed project leadership.

33. After issuing the SWO, Plaintiff was subjected to a very hostile confrontation with LUCIDO, with LUCIDO telling Plaintiff he was costing the project money and time.

34. Following the SWO, Shimmick Construction Project Director, Dan Howell (hereinafter "HOWELL") instructed all involved to meet on the morning of February 8, 2018, at 6:30 a.m. to review the SWO.

35. On February 8, 2018 at approximately 6:30 a.m., during the SWO review meeting, HOWELL and LUCIDO pressured and intimidated Plaintiff in lifting the SWO because they had crews

and equipment that were "idle", thus costing the project money. LUCIDO convinced HOWELL, that there was no concern over any drilled shafts and the SWO should not have been issued. Plaintiff lifted the SWO on February 8, 2017, even though Plaintiff and other Quality staff, including the structural project engineer and field engineer, knew that the reinforcement was not installed properly.

36. Later, it was determined that the reinforcement was in fact, NOT installed correctly. Plaintiff created NCR-CTR 020 to document the non-conforming work.

37. On February 8, 2018, following the SWO meeting, HOWELL entered Plaintiff's office and reprimanded Plaintiff for initiating the SWO, without even questioning Plaintiff about his reasons for issuing the SWO.

38. Between September 26, 2017 and July 23, 2018, the Lead Quality Engineer, Tom Jackson, project quality inspectors, Consolidated Engineering Laboratories, HART and HDOT inspectors, made increasing and continuous written and verbal complaints about project leaderships hostilities, and failure to comply with contract requirements related to inspection & testing. There were complaints about harassment, intimidation, and the prevention of proper inspections procedures based on hostility towards Plaintiff.

39. Complaints were a daily event and included phone calls to CRISMAN and COLLINS. At every occasion including during phone calls, site visits, meetings, emails, and text messages, Plaintiff and quality inspectors were verbally harassed, intimidated, and threatened to conform with the project schedule and budget, instead of doing their jobs, or risk being ostracized.

40. The Structures Discipline Lead, CECIK, and the TRAYLOR Structures Project Engineer, SUH, also voiced concerns to the project leadership and JV executives over the continued lack of adherence to construction quality, design requirements, and construction specifications by Shimmick Construction and Legacy Foundation.

41. CECIK and SUH along with other TRAYLOR structure staff members, complained that drilled shafts were not being constructed properly in terms of reinforcement placement, installation of unapproved materials, concrete failing CTL testing and other anomalies identified during inspection and testing.

42. CRISMAN also informed Plaintiff on several occasions about his concerns over questionable accounting practices, related to the acquisition of construction equipment, and STG paying excessive purchase prices without requesting competitive bids for similar equipment. CRISMAN informed Plaintiff that

LUCIDO was attempting to purchase equipment at a higher cost in order to purchase the equipment at the conclusion of the project for "pennies on the dollar", thus making substantial profit for ROC Equipment. The company in which LUCIDO purchased the equipment and was in some part, an owner of.

43. CRISMAN told Plaintiff he was aware of this through conversations with the STGJV Equipment Manager, Randal Carter, and would take action to report the issue to Mr. Traylor directly. CRISMAN also informed Plaintiff of pending audits by Granite Construction due to their concerns over project costs. CRISMAN told Plaintiff he felt HART may be overbilled for equipment that was not actually on the island or was not being used as identified on the construction schedule per contract requirements.

44. Between September 14, 2017 and July 24, 2018, Plaintiff generated and logged more than 63 NCRs. Of these, 38 (60%), were related to Shimmick Construction and Legacy Foundation, continued failure to abide by the contract requirements and project specifications.

45. In July, 2018, the structured field engineer Josh Harmon (hereinafter "HARMON") became verbally abusive with Plaintiff regarding Plaintiff's attempt to conduct a pre-arranged brief field training session with structures field staff on the correct method for consolidating concrete. The

training date and time was approved by the Structures Discipline Lead, CECIK.

46. Training was required by contract and was the result of an increase in concrete column defects identified by the Plaintiff, HART, and quality inspectors.

47. HARMON felt the training was not required and was VERY upset that Plaintiff was performing such training when time was money. Plaintiff continued with the training, which lasted only a few moments. Plaintiff reported the issue to CECIK who said he would speak to HARMON.

48. On July 12, 2018 at approximately 11:15 a.m., Plaintiff was accused by HOWELL and the Project Control Manager, Lynnette Butler (hereinafter "BUTLER") of intentionally manipulating engineering submittals and closing NCRs without HART approval. Plaintiff informed the accusers that the claim was false and was a continued attempt to discredit and damage Plaintiffs reputation.

49. Plaintiff immediately spoke with the Construction Manager, Chris Deane (hereinafter "DEANE") and expressed his anger over the false accusations informing DEANE that continued and intentional actions to discredit Plaintiff would be dealt with severely by means of informing HART, JV Executives and other agencies of the actions being taken by STGJV to subvert contract requirements.

50. On July 23, 2018, Plaintiff was terminated for allegedly failing to perform his duties as manager.

STATEMENT OF CLAIM

COUNT I

WHISTLEBLOWER'S PROTECTION ACT

51. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

52. The termination alleged was in violation of H.R.S. § 378-62 due to Plaintiff's report of safety issues regarding quality control, for which Plaintiff is entitled to an award of damages to be proven at trial.

53. The actions of Defendant and its employees as described above are oppressive, outrageous, and otherwise characterized by aggravating circumstances sufficient to justify the imposition of punitive damages.

54. Plaintiff has suffered, as a direct and proximate result of the aforesaid conduct, damages by way of loss of earnings and earning capacity, loss of fringe and pension benefits, and other benefits due to him.

55. As a further direct and proximate result of said unlawful conduct, Plaintiff has suffered the indignity of harassment, the invasion of his right to be free from unlawful employment practices, and great humiliation, which is manifest in emotional distress.

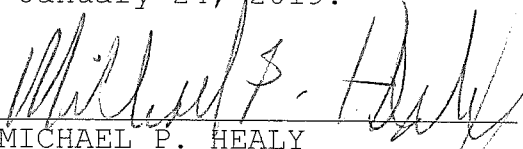
56. As a further direct and proximate result of said unlawful employment practices, Plaintiff has suffered mental anguish,

outrage, depression, severe anxiety about her future and his ability to support himself, harm to his employability and earning capacity as well as loss of a career advancement opportunity, painful embarrassment among his friends and co-workers, disruption of his personal life, and loss of enjoyment of the ordinary pleasures of everyday life for which he is entitled to an award of general damages.

WHEREFORE, upon a hearing hereof Plaintiff prays that judgment be entered on all Counts:

- A. For reinstatement to employment with Defendant with all benefits reinstated; and
- B. For all damages to which Plaintiff is entitled, including general damages and other damages to be proven at trial; and
- C. For special damages, including back pay, expenses, and other special damages to which Plaintiff is entitled; and
- D. For punitive damages; and
- E. For attorney's fees, costs of litigation, and interest, including prejudgment interest; and
- F. For such other and further relief as is appropriate.

DATED: Honolulu, Hawaii, January 24, 2019.


MICHAEL P. HEALY
CHARLES H. BROWER
Attorneys for Plaintiff
Edward Morris